75-587

IN THE

SUPREME COURT OF THE UNITED STATES

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October Term, 1975

FILED
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MICHAEL RODAK, JR., CLERK

No. 587

IN RE: A CONDEMNATION PROCEEDING IN REM BY REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA FOR THE PURPOSE OF REDEVELOPMENT OF FRANKLIN TOWN PROJECT PHILADELPHIA, INCLUDING CERTAIN LAND IMPROVEMENTS AND PROPERTIES

PHILIP B. BASSER ADVERTISING, INC., PHILIP B. BASSER, GERTRUDE GRENNETTE, THOMAS A. LAZAR, GENEVIEVE LAZAR, ARMONDO DE FRANCESO, JOSEPH SORGER, WILLIAM SATIS, BESSIE SATIS, HARRY WEXLAR, ARISTIDAS G. PAPPAS AND BARBARA PAPPAS,

Petitioners

v.

REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA,

Respondent

BRIEF FOR RESPONDENT IN OPPOSITION

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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COUNTER-STATEMENT OF THE ISSUE PRESENTED

Where, in an admittedly "blighted", certified redevelopment area, the Authority-Condemnor selects as developer a qualified private corporation which will use in the development no public funds and where, in the betterment of the public good and welfare, there may be some private pecuniary gain, does such taking by the Authority violate the Fifth and Fourteenth Amendments of the United States Constitution.

COUNTER-STATEMENT OF THE CASE

Petitioners' properties were condemned by the Redevelopment Authority of the City of Philadelphia (herein "Authority") for an urban development project known as the Franklin Town Project. Petitioners readily admit that the area was blighted and that the project will remove the blight. They, nevertheless, petition this Court to strike down the condemnation on the grounds that it violates the Fifth and Fourteenth Amendments of the Constitution of the United States in that the taking was "essentially for a private purpose". Petitioners' sole reason for urging this conclusion upon the Court is that the redevelopment project was conceived and is being carried out by a group consisting primarily of private landowners in the affected area.

The facts relevant to petitioners' contention are as follows:

In 1945, Pennsylvania, following a course that has become virtually universal among the states, enacted an Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, 35 P.S. §1701 et seq. In so doing the Pennsylvania Legislature declared it to be the policy of the Commonwealth to promote the health, safety and welfare of the inhabitants by creating redevelopment authorities for the purpose of eliminating blighted areas. (Section 2; 35 P.S. §1702). The law provides that: The Authority shall prepare a redevelopment proposal for any area certified by the Planning Commission to be a redevelopment area (i.e., an area that is blighted so as to require development); that the proposal shall be approved by the Planning Commission and by the governing body (in this case City Council) after public hearing; and that the governing body shall also approve the form of the proposed redevelopment contract with the redeveloper selected by the Authority (Section 10; 35 P.S. §1710). The law also requires certain terms and conditions to be contained in the redevelopment

contract in order to safeguard the public interest in the project (Section 11; 35 P.S. §1711), and authorizes the Authority to acquire land by purchase or eminent domain for the public purposes set forth therein (Section 9; 35 P.S. §1709) and to convey the same to the redeveloper by deed or lease, subject to the safeguards mentioned above (Section 11; 35 P.S. §1711).

In the case of the Franklin Town Project, the law was followed to the letter. The area had been certified by the Planning Commission in 1952, was recertified several times thereafter, and was included as a redevelopment area in the comprehensive plan of the City issued in 1967. The Franklin Town redevelopment proposal was announced in June of 1971. During the following six months, it received the necessary approvals of the Planning Commission and the Authority and the enabling ordinance was enacted by City Council after the prescribed public hearings at which, incidentally, several of the petitioners appeared and made their objections known. The ordinance as signed by the Mayor on December 31, 1971, reflected some of the views expressed at the public hearings and amended the proposed redevelopment contract in several respects.

A year later, in December, 1972, the redevelopment contract was signed, and thereafter, in April, 1973, the Authority authorized the use of eminent domain to acquire properties in the project area that could not be acquired by negotiation. Petitioners, together with certain other landowners, promptly filed objections to the taking in accordance with the Pennsylvania Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. §1-406, et seq., citing among other reasons their contention that the taking was essentially for a private purpose.

The trial court (Court of Common Pleas of Philadelphia County) after extensive hearings, dismissed the objections. Its opinion appears as Appendix A to the petition. The Court carefully considered the facts relied on by the petitioners: to wit that the project was conceived by a

group of private interests; that nearly all participants owned land in the project area; that the participants consulted the Mayor, the Authority, the Planning Commission and others about the feasibility of the Project and that the participants purchased additional properties in the area in contemplation of the Project. The Court also considered the terms of the so-called assistance contract between the redeveloper and the Authority; the inclusion of the South Block in the Project area, and the exclusion of the City Stores (Lits) warehouse. It found nothing improper in any of this and concluded that all procedures required by the Urban Redevelopment Law and the Eminent Domain Code had been complied with and that the condemnation served a public purpose.

In support of its decision the trial court cited a series of decisions of the Pennsylvania Supreme Court upholding the Redevelopment Law, including *Simco Stores v. Redevelopment Authority*, 455 Pa. 438, 317 A.2d 610 (1974) in which one of the developers was the owner of land in the redevelopment area, and the leading case of *Belovsky v. Redevelopment Authority of Philadelphia*, 357 Pa. 329, 54 A.2d 277 (1947), in which it was said:

> "Nor does the taking lose its public character merely because there may exist in the operation some feature of private gain, for if the public good is enhanced it is immaterial that a private interest also may benefit." (357 Pa. at 341, 54 A.2d at 283).

The trial court's decision was appealed to the Commonwealth Court of Pennsylvania which affirmed (Appendix B).

Finally, the objectors petitioned the Pennsylvania Supreme Court for the allowance of a further appeal. That petition was denied.

REASONS FOR DENYING THE WRIT

There is nothing unusual or novel about this case. The Pennsylvania Urban Redevelopment Law closely resembles the statutes of other states, as well as the statute in effect in the District of Columbia which was upheld by this Court in *Berman v. Parker*, 348 U.S. 26 (1954). The existence of blight (the essential foundation for the use of eminent domain) was certified and recertified by city agencies on the basis of detailed studies over a period of 20 years. A special study showed that elements of blight persisted as of the date the project was approved, and the history of the area was one of steady deterioration with no hope of spontaneous renewal.

The petitioners' complaint is also typical. Since the statutory scheme calls for the Authority to condemn the blighted area, if necessary, and then turn to a private contractor for redevelopment, the time-honored objection of the condemnee is that his property is being taken for a private purpose. And the time-honored response of the courts is to point out that the essential public purpose is to assemble, clear, reconstruct and rehabilitate the blighted area, and that this public purpose is not vitiated by the incidental use of a private redeveloper. As stated by this Court in *Berman*:

> "Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. See *Luxton v. North River Bridge Co., supra;* cf. *Highland v. Russell Car Co.*, 279 U.S. 253. The public end may be as well or better served through

an agency of private enterprise than through a department of government-or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects. What we have said also disposes of any contention concerning the fact that certain property owners in the area may be permitted to repurchase their properties for redevelopment in harmony with the over-all plan. That, too, is a legitimate means which Congress and its agencies may adopt, if they choose." 348 U.S. at 33.

The Pennsylvania cases state that a taking of private property is not constitutional unless for a public purpose, and the Pennsylvania courts have always reviewed any taking to determine whether a project is rationally related to the public purpose of removing blight and sound reconstruction. The court decisions typically present this issue as whether the action of the Authority was arbitrary, capricious or in bad faith. *Price v. Philadelphia Parking Authority*, 422 Pa. 317, 221 A.2d 138 (1966); *Belovsky v. Redevelopment Authority of Philadelphia, supra; Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 200 A.834 (1938).

The participation of the private redevelopers in this project was open and above board. They consulted the proper authorities; they obtained the required approvals after numerous community meetings and public hearings. The terms of their proposed redevelopment contract were a matter of public knowledge for six months before City Council approved them, and a year of trial court proceedings and over 2000 pages of testimony lead inexorably to the conclusion that the demands of due process had been fulfilled.

Notwithstanding the voluminous record, the petitioners assert that the "primary purpose" of the condemnation was private gain and therefore violative of the Fifth and Fourteenth Amendments. That amounts to an asser-

tion that the entire redevelopment procedure was tainted, that the Authority, the Planning Commission, City Council and the Mayor were in some way aiders and abettors and in a vast conspiracy, and that a total of 15 judges failed to discern it. The trial court found that there was not a scintilla of evidence to sustain petitioners' contentions, and in the absence of any new evidence, such assertions should not be entertained by this Court. Petitioners do not point to a single fact remotely suggesting that the public will not reap the benefits from this project which the Urban Redevelopment Law is designed to promote.

Mr. Justice Douglas speaking for the Court in *Berman, supra.*, at 33, stated:

> "In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. *It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capitol should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.*" (Emphasis added)

The Philadelphia City Council, Mayor and Redevelopment Authority have made the legislative judgment that the public purpose of removing blight from the Franklin Town Urban Renewal Area should be realized through the vehicle of a private redeveloper. The Pennsylvania courts held that this determination did not violate the Constitution. The law applied by the Pennsylvania courts in this case was consistent with the decisions of this Court.

WHEREFORE, Respondent prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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